

Before The  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

DOCKET FILE COPY  
**ORIGINAL**

**RECEIVED**

OCT - 8 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
Inquiry Concerning the Deployment of )  
Advanced Telecommunications )  
Capability to All Americans in a Reasonable )  
And Timely Fashion, and Possible Steps )  
To Accelerate Such Deployment Pursuant )  
To Section 706 of the Telecommunications )  
Act of 1996 )  
\_\_\_\_\_ )

CC Docket No. 98-146

**REPLY COMMENTS**

In response to comments filed regarding the above-captioned "Notice of Inquiry" ("NOI"), L/Q Licensee, Inc. ("LQL"), Globalstar, L.P., and AirTouch Communications, Inc. ("AirTouch"), hereby submit their joint reply comments in opposition to comments submitted by the Wireless Information Networks Forum ("WINForum"). LQL is the licensee of the Globalstar™ MSS Above 1 GHz satellite system.<sup>1</sup> Globalstar, L.P., a Delaware limited partnership, holds the right to offer capacity on the Globalstar system and owns and operates the international Mobile Satellite Service ("MSS") business. AirTouch is the United States service provider for Globalstar through its subsidiary AirTouch Satellite Services U.S., Inc.

---

<sup>1</sup> See Loral/Qualcomm Partnership, L.P., 10 FCC Rcd 2333 (Int'l Bur. 1995). The license was later assigned to LQL, a wholly-owned subsidiary of LQP.

No. of Copies rec'd  
List ABCDE

*OK*

These joint reply comments are limited to one issue – the untimely request by the WINForum that the Commission reconsider the operational and power limits established for Unlicensed NII (“U-NII”) devices operating on a secondary basis in the 5150-5250 MHz band.<sup>2</sup> This band is also used on a primary basis by the Globalstar system for communications between gateway earth stations and nongeostationary (“NGSO”) MSS space stations. The operational and power limits for U-NII devices were recently established by the Commission in ET Docket No. 96-102 and have already been reviewed and affirmed in response to a petition for reconsideration in that proceeding. There have been no material changes in operational environment for U-NII and MSS feeder links since the Commission’s decision. Accordingly, WINForum’s request to reconsider that decision is untimely and should be rejected forthwith.

### **Discussion**

In this NOI, the Commission sought comment on defining “advanced telecommunications services” and identifying the providers of such services. It also requested comment on how to determine whether such services could be provided in a “reasonable and timely fashion.” And, it invited proposals for regulatory action to reduce barriers to infrastructure investment in telecommunications and to promote competition in the telecommunications marketplace. NOI, ¶¶ 8-10. In short, the

---

<sup>2</sup> See WINForum Comments, at 8 (filed Sept. 14, 1998).

Commission is seeking broad-based ideas to promote access to advanced telecommunications in the future, rather than recommendations focused narrowly on the parochial interests of any one segment of the telecommunications marketplace. See NOI, ¶ 12.

The Commission has long been aware of the potential for MSS Above 1 GHz services to provide advanced telecommunications services. For example, four years ago, the Commission noted that MSS “has the potential to provide not only a variety of new services to users in the United States, but to provide integrated communication services to all parts of the world, including those that are now grossly underserved.”<sup>3</sup> The promise of these new services is soon to be brought to fruition as Globalstar anticipates commencement of global MSS services during 1999.

Ensuring that Globalstar and other MSS systems can provide advanced telecommunications services was one of the principal reasons that the Commission recently declined to permit high-powered Part 15 devices to be deployed in the 5150-5250 MHz band. This band was allocated at the 1995 World Radiocommunication Conference (“WRC-95”) for nongeostationary MSS feeder links, and the Commission is currently in the process of adopting that allocation into the U.S. Table of

---

<sup>3</sup> Amendment of the Commission’s Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 FCC Rcd 5936, 5939 (1994).

Frequency Allocations.<sup>4</sup> LQL is authorized to use these frequencies in accordance with the international allocation.<sup>5</sup> Although the Commission authorized deployment of U-NII devices in this band, it imposed an indoor use requirement and stringent power limits to protect NGSO MSS feederlinks from harmful interference.<sup>6</sup>

In adopting these restrictions on U-NII devices, the Commission deliberately struck a balance “between providing sufficient power limits for U-NII devices and protecting primary [MSS] operations.”<sup>7</sup> According to the Commission:

We believe that this approach will provide both MSS feeder link and U-NII operations with an appropriate level of protection and assurance for the continuation of their operations. While we think it unlikely that an interference situation will arise, this approach will permit us to develop regulatory solutions that will adequately protect the investments of both services, if such a situation were to develop. Accordingly, we believe that this approach will provide both the MSS community and the U-NII device manufacturers with adequate certainty concerning their operations. . . .<sup>8</sup>

---

<sup>4</sup> See Amendment of Parts 2, 25 and 97 of the Commission's Rules with Regard to the Mobile-Satellite Service Above 1 GHz, ET Docket No. 98-142, FCC 98-177 (released Aug. 4, 1998).

<sup>5</sup> L/Q Licensee, Inc., 11 FCC Rcd 16410 (Int'l Bur. 1996).

<sup>6</sup> See Amendment of the Commission's Rules to Provide for Operation of Unlicensed NII Devices in the 5 GHz Frequency Range, 12 FCC Rcd 1576, ¶ 44 (1997).

<sup>7</sup> Id. at 1595, ¶ 42.

<sup>8</sup> Id. at 1616, ¶ 97.

Although WINForum filed a petition for reconsideration of this decision, it did not seek reconsideration of the power limits in the 5150-5250 MHz band or the indoor use requirement.<sup>9</sup>

Nevertheless, in comments filed in this proceeding, WINForum claims that the operational and power limits adopted in the 5150-5250 MHz band for U-NII devices are “unjustified as an engineering matter,” and asks the Commission to conform the power limits in the 5150-5250 MHz band with the higher power limits for U-NII devices operating in the 5250-5350 MHz band and to lift the indoor use restriction.<sup>10</sup> LQL, Globalstar and AirTouch oppose WINForum’s suggestion on several grounds.

First, the Commission just recently rejected a similar proposal, and WINForum has offered nothing casting new light on that decision. A timely petition for reconsideration of the Commission’s Report and Order adopting rules for U-NII devices was filed by Hewlett-Packard Company seeking increased power for U-NII devices in the 5150-5250 MHz band. In June 1998, the Commission issued a Memorandum Opinion and Order rejecting Hewlett-Packard’s petition.<sup>11</sup> The Commission noted that it is “too early to predict reliably the variety and

---

<sup>9</sup> See WINForum’s Petition for Reconsideration and Clarification, ET Dkt. No. 96-102 (Mar. 3, 1997).

<sup>10</sup> WINForum Comments, at 8 & Appendix.

<sup>11</sup> Amendment of the Commission’s Rules to Provide for Operation of Unlicensed NII Devices in the 5 GHz Frequency Range, FCC 98-121 (released June 24, 1998).

number of U-NII operations that will use the band.”<sup>12</sup> Accordingly, the Commission declined to rely upon technical showings which attempted to demonstrate that U-NII devices would not cause significant interference into MSS feeder links.

Second, WINForum’s pleading on this issue amounts to an untimely petition for reconsideration of the initial Report and Order in ET Docket No. 96-102. WINForum advocated in that proceeding that the Commission adopt higher power limits for the 5150-5250 MHz band.<sup>13</sup> The Commission specifically declined to do so in the Report and Order, and WINForum did not seek reconsideration on that issue.

Section 405 of the Communications Act of 1934, as amended, provides that “[a] petition for reconsideration must be filed within thirty days from the date upon which public notice is given of the order, decision, report, or action complained of.”<sup>14</sup> Public notice of the Report and Order was given on January 31, 1997.<sup>15</sup> Thus, pursuant to Section 405, petitions for reconsideration of the Report and Order were due no later than March 3, 1997.

WINForum has filed what is simply a petition for reconsideration of the operational and power limits adopted for U-NII devices in the 5150-5250 MHz band. Yet, its filing is 18 months past the statutory time for filing such a petition. Pursuant to well-established Commission precedent, its recommendation in the

---

<sup>12</sup> Id., ¶ 15.

<sup>13</sup> Unlicensed NII Devices, 12 FCC Rcd at 1592-93, ¶ 36.

<sup>14</sup> 47 U.S.C. § 405(a); see also 47 C.F.R. § 1.429(d).

<sup>15</sup> 62 Fed. Reg. 4649 (Jan. 31, 1997).

Section 706 proceeding should be dismissed as an untimely petition for reconsideration.<sup>16</sup>

Accordingly, for the reasons set forth above, LQL, Globalstar and AirTouch request that the Commission reject WINForum's efforts to modify in this proceeding the operational and power limits applicable to U-NII devices in the 5150-5250 MHz band.

Respectfully submitted,

AIRTOUCH COMMUNICATIONS, INC.

L/Q LICENSEE, INC.  
GLOBALSTAR, L.P.

By: Pamela J. Riley (wdu)  
Pamela J. Riley  
AirTouch Communications, Inc.  
1818 N Street, N.W., Suite 800  
Washington, DC 20036  
(202) 293-3800

By: William D. Wallace  
William D. Wallace  
Crowell & Moring LLP  
1001 Pennsylvania Ave., N.W.  
Washington, DC 20004  
(202) 624-2500

William F. Adler  
Vice President, Legal and  
Regulatory Affairs  
Globalstar, L.P.  
3200 Zanker Road  
San Jose, CA 95134  
(408) 933-4400

Their Attorneys

Dated: October 8, 1998

---

<sup>16</sup> See Federation of Am. Health Systems, 12 FCC Rcd 2668, 2673 (1997); Reuters Ltd. v. FCC, 781 F.2d 946, 951-52 (D.C. Cir. 1986).

## CERTIFICATE OF SERVICE

I, William D. Wallace, hereby certify that I have on this 8th day of October, 1998, caused copies of the foregoing "Reply Comments" to be delivered via first-class mail, postage prepaid, or hand delivery (indicated by \*) to the following persons:

Regina Keeney \*  
Chief  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Suite 830  
Washington, D.C. 20554

Cassandra Thomas \*  
Deputy Chief, Satellite and  
Radiocommunication Division  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Suite 810  
Washington, D.C. 20554

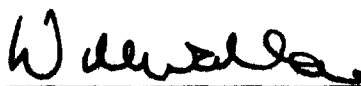
Fern Jarmulnek \*  
Chief, Satellite Policy Branch  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 518  
Washington, D.C. 20554

Wayne Moyers, Vice President  
Wireless Information Networks Forum  
1200 19th Street, N.W.  
Suite 300  
Washington, D.C. 20036-2401

Thomas Tycz \*  
Chief, Satellite and  
Radiocommunication Division  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Suite 811  
Washington, D.C. 20554

Karl Kensinger \*  
International Bureau  
Federal Communications Commission  
2000 M Street, N.W., Room 800  
Washington, D.C. 20554

John W. Berresford \*  
Senior Antitrust Attorney  
Industry Analysis Division  
Common Carrier Bureau  
Federal Communications Commission  
2033 M Street, N.W., Room 502-C  
Washington, D.C. 20554

  
\_\_\_\_\_  
William D. Wallace